

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MAY 2, 2012

AMENDED IN SENATE APRIL 17, 2012

AMENDED IN SENATE MARCH 27, 2012

SENATE BILL

No. 1234

Introduced by Senators De León and Steinberg

(Principal coauthor: Assembly Member Furutani)

(Coauthors: Senators Hernandez, Pavley, and Price)

(Coauthors: Assembly Members Allen, *Ammiano*, Blumenfield, and Solorio)

February 23, 2012

An act to add Section 20139 to, and to add Title 21 (commencing with Section 100000) to, the Government Code, and to add Section 1088.9 to the Unemployment Insurance Code, relating to retirement savings plans, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1234, as amended, De León. Retirement savings plans.

Existing federal law provides for tax-qualified retirement plans and individual retirement accounts or individual retirement annuities by which private citizens may save money for retirement.

This bill would enact the California Secure Choice Retirement Savings Trust Act, which would create the California Secure Choice Retirement Savings Trust to be administered by the California Secure Choice Retirement Savings Investment Board, which would also be established by the bill. The bill would require eligible employers, as defined, to offer a payroll deposit retirement savings arrangement so that eligible employees, as defined, could contribute a portion of their salary or

wages to a retirement savings program account in the California Secure Choice Retirement Savings Program, as specified. The bill would require eligible employees to participate in the program, unless the employee opts out of the program, as specified. The bill would require a specified percentage of the annual salary or wages of an eligible employee participating in the program to be deposited in the California Secure Choice Retirement Savings Trust, which would be segregated into a program fund and an administrative fund, both of which would be continuously appropriated to the board for purposes of the act. The bill would limit expenditures from the administrative fund, as specified. The bill would also require the board to establish a Gain and Loss Reserve Account within the program fund.

The bill would require an employer to use the Employment Development Department exemption certificate to create an option for employees to elect to opt out of the program. The bill would, commencing ~~January 1, 2014~~ *6 months after the program is ready to proceed*, require the Employment Development Department to assess a penalty on any eligible employer that fails to make the program available to eligible employees, as specified. The bill also would make a statement of legislative findings. The bill would provide that the state would have no liability for the payment of the benefits under the program, as specified.

The bill would provide that the operational provisions of the California Secure Choice Retirement Savings Trust Act shall be operative only if sufficient funds are made available through a nonprofit or private entity ~~or~~, federal funding, *or the annual Budget Act*, as specified, to allow the board to study, develop, and obtain the approvals necessary to implement the program and the board determines that the program can be self-sustaining.

Existing law establishes the Board of Administration of the Public Employees' Retirement System and vests the board with various powers and duties.

This bill would authorize that board to administer funds in the California Secure Choice Retirement Savings Trust, as specified.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the following:

1 (a) California workers without access to an employer-sponsored
2 retirement plan need a seamless, lifelong savings system, providing
3 them with the opportunity to build their assets and helping them
4 to attain their future financial stability through a program that
5 offers secure and portable retirement savings.

6 (b) According to recent data by the University of California,
7 Berkeley, Center for Labor Research and Education, middle class
8 families in California are at significant risk of not having enough
9 retirement income to meet even basic expenses, as nearly 50
10 percent of middle-income California workers will retire at or near
11 poverty.

12 (c) The lack of sufficient retirement savings poses a significant
13 threat to the state's already strained safety net programs and also
14 threatens to undermine California's fiscal stability and ongoing
15 economic recovery.

16 (d) The looming retirement security crisis exacerbates the state's
17 high unemployment rate, as seniors are forced to work longer and
18 fewer jobs are available for younger workers trying to enter the
19 workforce.

20 (e) Providing California workers with a guaranteed retirement
21 income to supplement social security, traditionally funded by stable
22 employer contributions via a defined benefit, employer-based
23 pension plan, is optimal to ensure that workers accumulate the
24 benefits they need for a secure retirement. California must pursue
25 guaranteed replacement income programs, including defined benefit
26 plans, for all working Californians. Establishing and offering a
27 universal retirement savings program to provide a vital supplement
28 to social security income would be an important step toward
29 ensuring the retirement security of all working Californians.

30 (f) Though employer-sponsored guaranteed retirement income
31 programs are valuable savings tools for workers, given the
32 changing needs and work habits of California's workers, they alone
33 are insufficient to afford workers a secure retirement. California
34 workers need additional retirement savings options to ensure their
35 retirement security.

36 (g) Private individuals have limited access to attractive financial
37 products that allow them to convert their savings into secure,
38 lifelong retirement income.

39 (h) Employers in the private sector that want to offer a retirement
40 savings plan for their employees often face significant barriers in

1 setting up their own workplace plans. In addition to the costs of
2 hiring service providers and paying fees, employer-sponsored plans
3 can be complex to maintain and administer, and they are subject
4 to an array of rules and regulations, including fiduciary
5 responsibility.

6 (i) In creating an additional retirement savings program for its
7 workers, California would supplement existing savings options,
8 thus assisting California's working men and women to save for
9 retirement. This program would be funded by the program's
10 participants without incurring liabilities to the state.

11 (j) The California Secure Choice Retirement Savings Trust
12 established by this act will promote expanded retirement security
13 for working Californians.

14 (k) The implementation and effectuation of the California Secure
15 Choice Retirement Savings Trust constitutes the carrying out of a
16 valid and vital public purpose.

17 SEC. 2. Section 20139 is added to the Government Code, to
18 read:

19 20139. The board shall have the power to administer funds in
20 the California Secure Choice Retirement Savings Trust pursuant
21 to a contract with the California Secure Choice Retirement Savings
22 Investment Board as provided in Title 21 (commencing with
23 Section 100000) and to help all California workers to plan and
24 save for retirement.

25 SEC. 3. Title 21 (commencing with Section 100000) is added
26 to the Government Code, to read:

27
28 TITLE 21. THE CALIFORNIA SECURE CHOICE
29 RETIREMENT SAVINGS TRUST ACT
30

31 100000. For purposes of this title the following definitions
32 shall apply:

33 (a) "Board" means the California Secure Choice Retirement
34 Savings Investment Board.

35 (b) "California Secure Choice Retirement Savings Program" or
36 "program" means a retirement savings program offered by the
37 California Secure Choice Retirement Savings Trust.

38 (c) (1) "Eligible employee" means a person who is employed
39 by an eligible employer.

40 (2) "Eligible employee" does not include:

1 (A) Any employee covered under the federal Railway Labor
2 Act (45 U.S.C. Sec. 151), or any employee engaged in interstate
3 commerce so as not to be subject to the legislative powers of the
4 state, except insofar as application of this title is authorized under
5 the United States Constitution or laws of the United States.

6 (B) Any employee covered by a valid collective bargaining
7 agreement that expressly provides for ~~an employee pension benefit~~
8 ~~plan for those employees as defined in the federal Employee~~
9 ~~Retirement Income Security Act of 1974, as amended (29 U.S.C.~~
10 ~~Sec. 1002) a multiemployer Taft-Hartley pension plan.~~

11 (d) “Eligible employer” means a person or entity engaged in a
12 business, industry, profession, trade, or other enterprise in the state,
13 whether for profit or not for profit, excluding the federal
14 government, the state, any county, any municipal corporation, or
15 any of the state’s units or instrumentalities, that has five or more
16 employees and that satisfies the requirements to establish or
17 participate in a payroll deposit retirement savings arrangement.

18 (e) “Participating employer” means an eligible employer that
19 provides a payroll deposit retirement savings arrangement provided
20 for by this title for eligible employees.

21 (f) “Payroll deposit retirement savings arrangement” means an
22 arrangement by which an employer ~~makes its payroll system~~
23 ~~available to~~ allows employees to remit payroll deduction
24 contributions to a retirement savings program.

25 (g) “IRA” means an individual retirement account or individual
26 retirement annuity under Section 408(a) or 408(b) of Title 26 of
27 the United States Code.

28 ~~(g)~~

29 (h) “Stated interest rate” means the rate of interest creditable to
30 program accounts as determined by the board pursuant to
31 subdivision (c) of Section 100005.

32 ~~(h)~~

33 (i) “Trust” means the California Secure Choice Retirement
34 Savings Trust established by this title.

35 100002. (a) (1) There is hereby created *within state*
36 *government* the California Secure Choice Retirement Savings
37 Investment Board, which shall consist of ~~the Treasurer, the Director~~
38 ~~of Finance, the Controller, an individual with retirement savings~~
39 ~~and investment expertise appointed by the Senate Committee on~~
40 ~~Rules, a small business representative and a public member each~~

~~1 appointed by the Governor, and an employee representative~~
~~2 appointed by the Speaker of the Assembly. The Treasurer shall~~
~~3 serve as chair of the board. of seven members, with the Treasurer~~
~~4 serving as chair, as follows:~~

5 (A) *The Treasurer.*

6 (B) *The Director of Finance, or his or her designee.*

7 (C) *The Controller.*

8 (D) *An individual with retirement savings and investment*
9 *expertise appointed by the Senate Committee on Rules.*

10 (E) *A small business representative appointed by the Governor.*

11 (F) *A public member appointed by the Governor.*

12 (G) *An employee representative appointed by the Speaker of*
13 *the Assembly.*

14 (2) *Members of the board appointed by the Governor, the Senate*
15 *Committee on Rules, and the Speaker of the Assembly shall serve*
16 *at the pleasure of the appointing authority.*

17 (b) *All members of the board shall serve without compensation.*
18 *Members of the board shall be reimbursed for necessary travel*
19 *expenses incurred in connection with their board duties.*

20 (c) *A board member, program administrator, and other staff of*
21 *the board shall not do any of the following:*

22 (1) *Directly or indirectly have any interest in the making of any*
23 *investment made for the program, or in the gains or profits*
24 *accruing from any investment made for the program.*

25 (2) *Borrow any funds or deposits of the trust, or use those funds*
26 *or deposits in any manner, for himself or herself or as an agent*
27 *or partner of others.*

28 (3) *Become an endorser, surety, or obligor on investments by*
29 *the board.*

30 (d) *The board and the program administrator and staff shall*
31 *discharge their duties with respect to the trust solely in the interest*
32 *of the program participants as follows:*

33 (1) *For the exclusive purposes of providing benefits to program*
34 *participants and defraying reasonable expenses of administering*
35 *the program.*

36 (2) *By investing with the care, skill, prudence, and diligence*
37 *under the circumstances then prevailing that a prudent person*
38 *acting in a like capacity and familiar with those matters would*
39 *use in the conduct of an enterprise of a like character and with*
40 *like aims.*

1 ~~(b)~~

2 ~~(e)~~ The board shall annually prepare and adopt a written
3 statement of investment policy. The board shall consider the
4 statement of investment policy and any changes in the investment
5 policy at a public hearing.

6 ~~(e)~~

7 ~~(f)~~ The board shall approve an investment management entity
8 or entities. Not later than 30 days after the close of each month,
9 the board shall place on file for public inspection during business
10 hours a report with respect to investments made pursuant to this
11 section and a report of deposits in financial institutions. The
12 investment manager shall report the following information to the
13 board within 20 days following the end of the each month:

14 (1) The type of investment, name of the issuer, date of maturity,
15 and the par and dollar amount invested in each security, investment,
16 and money within the program fund.

17 (2) The weighted average maturity of the investments within
18 the program fund.

19 (3) Any amounts in the program fund that are under the
20 management of private money managers.

21 (4) Any amounts in the program fund that are under the
22 management of the Board of Administration of the Public
23 Employees' Retirement System.

24 (5) The market value as of the date of the report and the source
25 of this valuation for each security within the program fund.

26 (6) A description of compliance with the statement of investment
27 policy.

28 100004. (a) There is hereby established a retirement savings
29 trust known as the California Secure Choice Retirement Savings
30 Trust to be administered by the board for the purpose of promoting
31 greater retirement savings for California private employees in a
32 convenient, voluntary, low cost, and portable manner. The
33 California Secure Choice Retirement Savings Trust, as a
34 self-sustaining trust, shall pay all costs of administration out of
35 earnings on moneys on deposit therein.

36 (b) The board shall segregate moneys received by the California
37 Secure Choice Retirement Savings Trust into two funds, which
38 shall be identified as the program fund and the administrative fund.
39 Notwithstanding Section 13340, moneys in the trust are hereby

1 continuously appropriated, without regard to fiscal years, to the
2 board for the purposes of this title.

3 (c) Moneys in the program fund may be invested or reinvested
4 by the Treasurer or may be invested in whole or in part under
5 contract with the Board of Administration of the Public Employees'
6 Retirement System, or private money managers, or both, as
7 determined by the board.

8 (d) Transfers may be made from the program fund to the
9 administrative fund for the purpose of paying operating costs
10 associated with administering the trust and as required by this title.
11 On an annual basis, expenditures from the administrative fund
12 shall not exceed more than 1 percent of the total program fund.
13 All costs of administration of the trust shall be paid out of the
14 administrative fund.

15 (e) Any contributions paid by employees and employers into
16 the trust shall be used exclusively for the purpose of paying benefits
17 to the participants of the California Secure Choice Retirement
18 Savings Program, for the cost of administration of the program,
19 and for investments made for the benefit of the program.

20 100004.5. (a) The board shall establish a segregated account
21 within the program fund to be known as the Gain and Loss Reserve
22 Account, and the board shall have sole authority over the account.
23 The Gain and Loss Reserve Account shall be maintained for the
24 program and may be used to credit interest at the stated interest
25 rate for program years in which the board determines that the stated
26 interest rate cannot be met from investment earnings.

27 (b) The board shall establish a goal for the balance of the Gain
28 and Loss Reserve Account and shall periodically review the
29 sufficiency of the reserve account based on the recommendations
30 of the board's actuary.

31 (c) The board may allocate excess earnings of the program with
32 respect to assets attributable to the program to the Gain and Loss
33 Reserve Account. In addition, the board may allocate any liability
34 gains and losses to the Gain and Loss Reserve Account. Based on
35 an actuarial valuation following each program year, the board shall
36 determine annually the amount, if any, that is to be allocated to
37 the Gain and Loss Reserve Account for that program year. In
38 determining whether to allocate excess earnings to the Gain and
39 Loss Reserve Account, the board shall consider all of the following:

40 (1) Whether or not the program has excess earnings.

1 (2) The sufficiency of the Gain and Loss Reserve Account in
2 light of the goal established pursuant to subdivision (b).

3 (3) The amount required for the program's administrative costs.

4 (4) The amount required for crediting individuals' accounts at
5 the stated interest rate.

6 (d) In determining whether to allocate liability gains and losses
7 to the Gain and Loss Reserve Account, the board shall consider
8 the matters described in paragraphs (2), (3), and (4) of subdivision
9 (c).

10 100005. (a) The California Secure Choice Retirement Savings
11 Program shall include, as determined by the board, one or more
12 payroll deposit retirement savings arrangements.

13 (b) Individual accounts under the California Secure Choice
14 Retirement Savings Program shall be nominal accounts. Individual
15 contributions and any employer contributions on behalf of the
16 individual that are specifically identified as creditable to the
17 program shall be treated as credits to the individual's California
18 Secure Choice Retirement Savings Program account, together with
19 interest credited at the stated interest rate and any additional
20 earnings credited thereon. The balance of the credits in an
21 individual's account shall determine the amount to which the
22 individual is entitled under the program upon termination of
23 coverage by the program. The individual shall not have the right
24 or claim to any specific assets of the account, program, or program
25 fund.

26 (c) (1) Prior to July 1 of the initial program year, and prior to
27 the beginning of each program year thereafter, the board shall
28 adopt a program amendment with respect to the program to declare
29 the stated rate at which interest shall be credited to program
30 accounts for the following program year.

31 (2) Interest shall be credited to program accounts and shall be
32 computed at the stated interest rate on the balance of credits in an
33 individual's account and shall be compounded daily.

34 (d) An individual's retirement savings benefit under the program
35 shall be an amount equal to the balance of the credits in the
36 individual's program account on the date the retirement savings
37 benefit becomes payable.

38 100006. (a) The board, in the capacity of trustee, shall have
39 the power and authority to do all of the following:

- 1 (1) Make and enter into contracts necessary for the
2 administration of the trust.
- 3 (2) Adopt a seal and change and amend it from time to time.
- 4 (3) Cause moneys in the program fund to be held and invested
5 and reinvested.
- 6 (4) Accept any grants, gifts, legislative appropriation, and other
7 moneys from the state, any unit of federal, state, or local
8 government or any other person, firm, partnership, or corporation
9 for deposit to the administrative fund or the program fund.
- 10 (5) Appoint a program administrator and determine the duties
11 of the program administrator and other staff as necessary and set
12 their compensation.
- 13 (6) Make provisions for the payment of costs of administration
14 and operation of the trust.
- 15 (7) Employ staff.
- 16 (8) Retain and contract with the Board of Administration of the
17 Public Employees' Retirement System, private financial
18 institutions, other financial and service providers, consultants,
19 actuaries, counsel, auditors, third-party administrators, and other
20 professionals as necessary.
- 21 (9) Procure insurance against any loss in connection with the
22 property, assets, or activities of the trust, and secure private
23 underwriting ~~to insure the retirement savings benefit that is~~
24 ~~guaranteed to program participants and reinsurance to manage~~
25 ~~risk and insure the retirement savings benefit.~~
- 26 (10) Procure insurance indemnifying each member of the board
27 from personal loss or liability resulting from a member's action
28 or inaction as a member of the board.
- 29 (11) Set minimum and maximum investment levels.
- 30 (12) Collaborate and cooperate with the Board of Administration
31 of the Public Employees' Retirement System, private financial
32 institutions, service providers, and business, financial, trade,
33 membership, and other organizations to the extent necessary or
34 desirable for the effective and efficient design, implementation,
35 and administration of the program and to maximize outreach to
36 eligible employers and eligible employees.
- 37 (13) Cause expenses incurred to initiate, implement, maintain,
38 and administer the program to be paid from contributions to, or
39 investment returns or assets of, the program or arrangements

1 established under the program, to the extent permitted under state
2 and federal law.

3 (14) Facilitate compliance by the retirement savings program
4 or arrangements established under the program with all applicable
5 requirements for the program under the Internal Revenue Code of
6 1986, including tax qualification requirements or any other
7 applicable law and accounting requirements, including providing
8 or arranging for assistance to program sponsors and individuals
9 in complying with applicable law and tax qualification
10 requirements in a cost-effective manner.

11 (15) Carry out the duties and obligations of the California Secure
12 Choice Retirement Savings Trust pursuant to this title and exercise
13 any and all other powers as may be reasonably necessary for the
14 effectuation of the purposes, objectives, and provisions of this title
15 pertaining to the trust.

16 (b) The board shall adopt regulations it deems necessary to
17 implement this title consistent with the federal Internal Revenue
18 Code and regulations issued pursuant to that code to ensure that
19 the program meets all criteria for federal tax-deferral or tax-exempt
20 benefits, or both.

21 100008. In addition to the powers and authority granted to the
22 board pursuant to Section 100006, the board shall have the power
23 and authority to do the following:

24 (a) Cause the retirement savings program or arrangements
25 established under the program to be designed, established, and
26 operated, in a manner consistent with all of the following:

27 (1) In accordance with best practices for retirement savings
28 vehicles.

29 (2) To maximize participation, saving, and sound investment
30 practices, and appropriate selection of default investments.

31 (3) With simplicity, ease of administration for participating
32 employers, and portability of benefits.

33 (b) Arrange for collective, common, and pooled investment of
34 assets of the retirement savings program or arrangements, including
35 investments in conjunction with other funds with which those
36 assets are permitted to be collectively invested, with a view to
37 saving costs through efficiencies and economies of scale.

38 (c) Explore and establish investment options that offer
39 employees guaranteed returns on contributions and the conversion

1 of retirement savings account balances to secure retirement income
2 without incurring debt or liabilities to the state.

3 (d) Disseminate educational information concerning saving and
4 planning for retirement.

5 (e) Disseminate information concerning the tax credits available
6 to small business owners for establishing new retirement plans
7 and the federal ~~saver's tax credit~~ *Retirement Savings Contribution*
8 *Credit (Saver's Credit)* available to lower and moderate-income
9 households for ~~saving in plans or arrangements~~ *qualified savings*
10 *contributions*.

11 (f) Submit progress and status reports to participating employers
12 and eligible employees.

13 (g) If necessary, determine the eligibility of an employer,
14 employee, or other individual to participate in the program.

15 (h) Evaluate and establish the process by which an eligible
16 employee of an eligible employer is able to contribute a portion
17 of his or her salary or wages to the program for automatic deposit
18 of those contributions and the participating employer provides a
19 payroll deposit retirement savings arrangement to forward the
20 employee contribution and related information to the program or
21 its agents. This may include, but is not limited to, financial services
22 companies and third-party administrators with the capability to
23 receive and process employee information and contributions for
24 payroll deposit retirement savings arrangements or other
25 arrangements authorized by this title.

26 (i) *Design and establish the process for the enrollment of*
27 *program participants.*

28 ~~(j)~~

29 (j) Allow participating employers to use the program to
30 contribute to the account on their employees' behalf or match their
31 employees' contributions.

32 ~~(j)~~

33 (k) Evaluate and establish the process by which an individual
34 or an employee of a nonparticipating employer may ~~establish~~ *enroll*
35 and make contributions to the program.

36 100009. (a) *Prior to opening the California Secure Choice*
37 *Retirement Savings Program for enrollment, the board shall design*
38 *and disseminate to employers through the Employment*
39 *Development Department (EDD) an employee information packet.*

1 *The packet shall include background information on the program*
2 *and appropriate disclosures for employees.*

3 *(b) The disclosure form shall include, but not be limited to, all*
4 *of the following:*

5 *(1) The benefits and risks associated with making contributions*
6 *to the program.*

7 *(2) The mechanics of how to make contributions to the program.*

8 *(3) How to opt out of the program.*

9 *(4) The process for withdrawal of retirement savings.*

10 *(5) How to obtain additional information on the program.*

11 *(c) In addition, the disclosure form shall clearly articulate the*
12 *following:*

13 *(1) Employees seeking financial advice should contact financial*
14 *advisors, that employers are not in a position to provide financial*
15 *advice, and that employers are not liable for decisions employees*
16 *make pursuant to Section 100016.*

17 *(2) The program fund is privately insured and is not guaranteed*
18 *by the State of California.*

19 *(d) The disclosure form shall include a signature line for the*
20 *employee to sign and date acknowledging that the employee has*
21 *read all of the disclosures and understands their content.*

22 *(e) The employee information packet shall be made available*
23 *to employers through EDD and supplied to employees at the time*
24 *of hiring. All new employees shall review the packet and*
25 *acknowledge having read it by signing the signature line*
26 *accompanied by the date of the signature.*

27 *(f) The employee information packet shall be supplied to existing*
28 *employees when the program is initially launched for that*
29 *participating employer pursuant to Section 100010 and employees*
30 *shall review and sign the disclosure form at that time.*

31 ~~100010. (a) After the board opens the program California~~
32 ~~Secure Choice Retirement Savings Program for enrollment, any~~
33 ~~employer may choose to participate and make the program~~
34 ~~available to employees have a payroll deposit retirement savings~~
35 ~~arrangement to allow employee participation in the program.~~

36 ~~(b) Beginning three months after the board opens the program~~
37 ~~for enrollment, eligible employers with more than 100 eligible~~
38 ~~employees and that do not offer an employer-sponsored retirement~~
39 ~~plan shall make the program available to eligible employees, and~~
40 ~~each eligible employee shall be enrolled in the program, unless~~

1 ~~the employee elects not to participate in the program as provided~~
2 ~~in subdivision (e) or automatic enrollment payroll deduction IRA~~
3 ~~shall have a payroll deposit retirement savings arrangement to~~
4 ~~allow employee participation in the program.~~

5 (c) Beginning six months after the board opens the program for
6 enrollment, eligible employers with more than 50 eligible
7 employees and that do not offer an employer-sponsored retirement
8 plan ~~shall make the program available to eligible employees, and~~
9 ~~each eligible employee shall be enrolled in the program, unless~~
10 ~~the employee elects not to participate in the program as provided~~
11 ~~in subdivision (e) or automatic enrollment payroll deduction IRA~~
12 ~~shall have a payroll deposit retirement savings arrangement to~~
13 ~~allow employee participation in the program.~~

14 (d) Beginning nine months after the board opens the program
15 for enrollment, all other eligible employers that do not offer an
16 employer-sponsored retirement plan ~~shall make the program~~
17 ~~available to eligible employees, and each eligible employee shall~~
18 ~~be enrolled in the program, unless the employee elects not to~~
19 ~~participate in the program as provided in subdivision (e) or~~
20 ~~automatic enrollment payroll deduction IRA shall have a payroll~~
21 ~~deposit retirement savings arrangement to allow employee~~
22 ~~participation in the program.~~

23 (e) (1) *Each eligible employee shall be enrolled in the program*
24 *unless the employee elects not to participate in the program. An*
25 *eligible employee may elect to opt out of the program by making*
26 *a notation on the exemption certificate produced by the*
27 *Employment Development Department. If the employee elects to*
28 *opt out, the employee shall, after 24 months, be enrolled in the*
29 *program, unless the employee again elects to opt out as provided*
30 *in this subdivision.*

31 (2) *Following initial implementation of the program pursuant*
32 *to this section, at least once every two years, participating*
33 *employers shall designate an open enrollment period during which*
34 *eligible employees that previously opted out of the program shall*
35 *be enrolled in the program unless the employee again elects to opt*
36 *out as provided in this subdivision.*

37 (3) *An employee who elects to opt out of the program who*
38 *subsequently wants to participate through the employer's payroll*
39 *deposit retirement savings arrangement may only enroll during*

1 *the employer's designated open enrollment period or if permitted*
2 *by the employer at an earlier time.*

3 (f) Employers shall retain the option at all times to set up any
4 type of *employer-sponsored* retirement plan, such as a defined
5 benefit plan or a 401(k) plan, ~~instead of making the program~~
6 ~~available to its eligible employees or offer an automatic enrollment~~
7 *payroll deduction IRA, instead of having a payroll deposit*
8 *retirement savings arrangement to allow employee participation*
9 *in the California Secure Choice Retirement Savings Program.*

10 (g) An eligible employee may also terminate his or her
11 participation in the program at any time in a manner prescribed
12 by the board and thereafter by making a notation on the exemption
13 certificate produced by the Employment Development Department.

14 (h) Unless otherwise specified by the employee, a participating
15 employee shall contribute 3 percent of the employee's annual
16 salary or wages to the program.

17 (i) By regulation, the board may adjust the contribution amount
18 set in subdivision (h) to no less than 2 percent and no more than
19 4 percent and may vary that amount within that 2 percent to 4
20 percent range for participating employees according to the length
21 of time the employee has contributed to the program.

22 100016. ~~Participating employers~~ (a) ~~Employers shall not be~~
23 ~~liable have any liability for an employee's decision to participate~~
24 ~~in, or opt out of, the California Secure Choice Retirement Savings~~
25 ~~Program, or for the investment decisions of employees whose~~
26 ~~assets are deposited in the program.~~

27 (b) *Employers shall not be a fiduciary, or considered to be a*
28 *fiduciary, over the California Secure Choice Retirement Savings*
29 *Trust or the program. An employer shall not bear responsibility*
30 *for the administration, investment, or investment performance of*
31 *the program. An employer shall not be liable with regard to*
32 *investment returns, program design, and benefits paid to program*
33 *participants.*

34 (c) *An employer's voluntary contribution to the program on*
35 *behalf of an employee shall not in any way contradict the*
36 *provisions of this section or change the employer's relationship*
37 *to the program or an employer's obligations to employees.*

38 100017. The state shall ~~not have~~ ~~no~~ any liability for the
39 payment of the retirement savings benefit that is guaranteed to
40 program participants pursuant to this title. Any financial liability

1 for the payment of benefits in excess of funds available under the
2 program shall be borne by the underwriters pursuant to the contract
3 entered into with the board on behalf of the program participants.
4 The state, and any of the funds of the state, shall have no obligation
5 for payment of the guaranteed benefits arising from this title.

6 100018. (a) Notwithstanding Section 10231.5, the board shall
7 submit an annual audited financial report, prepared in accordance
8 with generally accepted accounting principles, on the operations
9 of the California Secure Choice Retirement Savings Trust by
10 August 1 to the Governor, the Controller, the State Auditor, and
11 the Legislature, pursuant to Section 9795. The annual audit shall
12 be made by an independent certified public accountant and shall
13 include, but not be limited to, direct and indirect costs attributable
14 to the use of outside consultants, independent contractors, and any
15 other persons who are not state employees.

16 (b) The annual audit shall be supplemented by the following
17 information prepared by the board:

18 (1) Any studies or evaluations prepared in the preceding year.

19 (2) A summary of the benefits provided by the trust including
20 the number of participants in the trust.

21 (3) Any other information that is relevant in order to make a
22 full, fair, and effective disclosure of the operations of the California
23 Secure Choice Retirement Savings Trust.

24 100022. The board shall initially conduct a market analysis to
25 determine whether the necessary conditions for implementation
26 of this title can be met, including, but not limited to, likely
27 participation rates, participants' comfort with various investment
28 vehicles and degree of risk, contribution levels, and the rate of
29 account closures and rollovers. The board shall conduct this
30 analysis only if sufficient funds are made available through a
31 nonprofit or private entity, *or from federal funding, or an annual*
32 ~~Budget Act appropriation.~~ The board shall forward its findings to
33 the Chair of the Senate Committee on Labor and Industrial
34 Relations, the Chair of the Senate Committee on Public
35 Employment and Retirement, and the Chair of the Assembly
36 Committee on Public Employees, Retirement and Social Security.

37 100024. With the exceptions of subdivision (a) of Section
38 100002, and Sections 100022 and 100026, the provisions of this
39 title shall become operative only if funds are made available
40 through a nonprofit or private entity ~~or~~, federal funding, *or an*

1 *annual Budget Act appropriation* in amounts sufficient to allow
2 the board to study, develop, and obtain the approvals necessary to
3 implement this title and the board notifies the Director of Finance
4 that, based on its market analysis, the provisions of this title can
5 be self-sustaining pursuant to this title.

6 100026. This title shall be construed liberally in order to
7 effectuate its legislative intent. The purposes of this title and all
8 of its provisions with respect to the powers granted shall be broadly
9 interpreted to effectuate that intent and purposes and not as to any
10 limitation of powers.

11 SEC. 4. Section 1088.9 is added to the Unemployment
12 Insurance Code, to read:

13 1088.9. (a) The department shall have the power and duties
14 necessary to administer the enforcement of employer compliance
15 with Title 21 (commencing with Section 100000) of the
16 Government Code.

17 (b) An eligible employer shall use the department's exemption
18 certificate to create an option for an eligible employee to note his
19 or her decision to opt out of utilizing the California Secure Choice
20 Retirement Savings Program. The department shall make the
21 opt-out notation simple and concise and in a manner it deems
22 necessary to appropriately evidence the employee's understanding
23 that he or she is choosing not to automatically deduct earnings to
24 save for retirement.

25 (c) Each eligible employer who, without good cause, fails to
26 ~~make allow its eligible employees to participate in the California~~
27 ~~Secure Choice Retirement Savings Program available to all of its~~
28 ~~eligible employees pursuant to Section Sections 100009 and~~
29 ~~100010 of the Government Code, on or before 90 days after service~~
30 ~~of notice by the director pursuant to Section 1206 of his or her~~
31 ~~failure to comply, shall pay a penalty of one thousand dollars~~
32 ~~(\$1,000) for every eligible employee not offered the retirement~~
33 ~~savings program. The a penalty of two hundred fifty dollars (\$250)~~
34 ~~per eligible employee if noncompliance extends 90 days or more~~
35 ~~after the notice, and if found to be in willful noncompliance 180~~
36 ~~days or more after the notice, an additional penalty of five hundred~~
37 ~~dollars (\$500) per eligible employee.~~

38 (d) The department shall enforce this penalty as part of its
39 existing investigation and audit function.

40 (d)

1 (e) The provisions of this article, the provisions of Article 9
2 (commencing with Section 1176), with respect to refunds and
3 overpayments, and the provisions of Article 11 (commencing with
4 Section 1221), with respect to administrative appellate review shall
5 apply to the penalty imposed by this section. Penalties collected
6 pursuant to this section shall be deposited in the contingent fund.

7 ~~(e)~~

8 (f) This section shall become operative ~~on January 1, 2014~~ *six*
9 *months after the board notifies the Director of the Employment*
10 *Development Department that the full implementation of Title 21*
11 *(commencing with Section 100000) of the Government Code will*
12 *proceed. Upon receipt of the notification from the board, the*
13 *department shall immediately post on its Internet Web site a notice*
14 *stating that this section is operative, and the date that it is first*
15 *operative.*

16 (g) *If the department participates in the implementation and*
17 *administration of the program, it may charge the board a*
18 *reasonable fee for costs it incurs for implementing and*
19 *administering the program.*